FOR ARGUMENT

Supreme Court, U.S.
FILED
FEB 27 2003

No. 02-281

IN THE

# Supreme Court of the United States

---

INYO COUNTY, *et al.*,
*Petitioners,*

v.

PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY, *et al.*,
*Respondents.*

---

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

---

## BRIEF *AMICUS CURIAE* FOR UNITED SOUTH AND EASTERN TRIBES, INC., IN SUPPORT OF RESPONDENTS

---

WILLIAM W. TAYLOR, III *
ELEANOR H. SMITH
DAVID A. REISER
ZUCKERMAN SPAEDER LLP
1201 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 778-1800

* Counsel of Record

*Counsel for Amicus*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

## TABLE OF CONTENTS


INTERESTS OF *AMICUS CURIAE* ..... 1

STATEMENT ..... 3

SUMMARY OF ARGUMENT ..... 5

ARGUMENT ..... 7

STATES DO NOT HAVE JURISDICTION TO SEIZE TRIBAL RECORDS FROM TRIBAL GOVERNMENTS ON TRIBAL LANDS ..... 7

A. States Do Not Have "Inherent Jurisdiction" Over Tribal Governments in Indian Country ..... 7

B. *Hicks* Should Not Be Extended to Searches of Tribal Governments. ..... 28

CONCLUSION ..... 30

APPENDIX ..... 1a

Indian Trade and Intercourse Act of 1790 ..... 1a

Indian Trade and Intercourse Act of 1793 ..... 3a

Indian Trade and Intercourse Act of 1796 ..... 9a

Indian Trade and Intercourse Act of 1834 ..... 42a

Treaty of Fort Pitt (Pennsylvania) With the Delaware Nation (1778).....54a

Treaty of Ft. Schuyler (1788) .....58a

Treaty Between the Creek and Georgia (1785) .....62a

Treaty Between the Creek and Georgia (1786) .....64a



## TABLE OF AUTHORITIES

**CASES**

*Alden v. Maine*, 527 U.S. 706 (1999) .....16

*Alexander v. Sandoval*, 532 U.S. 275 (2001).....9

*BE & K Const. Co. v. NLRB*, 122 S. Ct. 2390 (2002).....9

*Brendale v. Confederated Tribes of the Yakima Nation*, 492 U.S. 408 (1989).....29

*Bryan v. Itasca County*, 426 U.S. 373 (1976).....8

*Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).....11, 12, 16

*County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985).....16

*County of Yakima v. Confederated Tribes*, 502 U.S. 251 (1992).....7

*Donnelly v. United States*, 228 U.S. 243 (1913).....27

*Draper v. United States*, 164 U.S. 240 (1896).....26, 27

*Fellows v. Blacksmith*, 60 U.S. 366 (1856) .....22, 23

*Goodyear Atomic Corp v. Miller*, 486 U.S. 174 (1988).....7

*Hancock v. Train*, 426 U.S. 167 (1976).....7

*Harkness v. Hyde*, 98 U.S. 476 (1878) .....24

*Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998) .....29, 30

*Langford v. Monteith*, 102 U.S. 145 (1880).....24

*McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 (1973).....13

*Moe v. Confederated Tribes*, 425 U.S. 463 (1976).....29

*Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).....16

*Montana v. United States*, 450 U.S. 544 (1981).....8

*National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845 (1985).....29

*New York ex rel. Ray v. Martin*, 326 U.S. 496 (1946).....26, 27

*Nevada v. Hicks*, 533 U.S. 353 (2001).....*passim*

*Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995).....8

*Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974).....18

*Organized Village of Kake v. Egan*, 369 U.S. 60 (1962).....23, 24

*Puyallup Tribe v. Washington Dept. of Game*, 433 U.S. 165 (1977).....8



*Rice v. Olson*, 324 U.S. 786 (1945) .....2, 5, 10

*South Carolina v. Catawba Tribe, Inc.* 476 U.S. 498 (1986).....10

*The Kansas Indians*, 72 U.S. 737 (1867).....22

*The New York Indians*, 72 U.S. 761 (1867).....22

*United States v. Bailey*, 24 F.Cas. 937 (C.C.D. Tenn. 1834) .....20

*United States v. Kagama*, 118 U.S. 375 (1886).....27

*United States v. Mazurie*, 419 U.S. 544 (1975).....13

*United States v. McBratney*, 104 U.S. 621 (1881).....25, 26

*United States v. Ward*, 28 F.Cas. 397 (C.C.D. Kan. 1863).....24

*United States v. Wheeler*, 435 U.S. 313 (1978).....13

*Utah & N. Ry. Co. v. Fisher*, 116 U.S. 28 (1885).....24-25

*Warren Trading Post v. Arizona Tax Comm'n*, 380 U.S. 685 (1965).....11

*Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980).....10

*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).....13

*Williams v. Lee*, 358 U.S. 217 (1959).....7, 10, 13, 28

*Williams v. United States*, 327 U.S. 711 (1946) .....27

*Worcester v. Georgia*, 31 U.S. 515 (1832) .....*passim*

**FEDERAL STATUTES**

18 U.S.C. § 1162 (2000) .....8

25 U.S.C. § 233 (2001) .....24

25 U.S.C. §§ 450-450n (2001) .....29

25 U.S.C. §§ 1901-1963 (2001) .....29

Act of March 3, 1817, 3 Stat. 383 (1817) .....20

Indian Trade and Intercourse Act, 1 Stat. 137 (1790) .....17-18

Indian Trade and Intercourse Act, 1 Stat. 330 (1793) .....18-19

Indian Trade and Intercourse Act, 1 Stat. 469 (1796) .....19-20

Indian Trade and Intercourse Act, 4 Stat. 729 (1834) .....21

**STATE STATUTES**

Cal. Welf. & Inst. Code § 11004(a) (2001) .....4

**FEDERAL TREATIES**

Treaty of Canandaigua, 7 Stat. 44 (Nov. 11, 1794) .....23



Treaty With the Choctaw, 7 Stat. 21 (Jan. 3, 1786) .....15

Treaty With the Cherokee, 7 Stat. 18 (Nov. 28, 1785) .....15

Treaty With the Chickasaw, 7 Stat. 24 (Jan. 10, 1786) .....15

Treaty With the Delaware, 7 Stat. 13 (Sept. 17 1778) .....14

Treaty With the Kaskaskia, 10 Stat. 1082 (May 30, 1854) .....22

Treaty With the Miami, 10 Stat. 1093 (June 5, 1854) .....22

Treaty With the Shawnee, 7 Stat. 26 (Jan. 31, 1786) .....15

Treaty With the Shawnee, 10 Stat. 1053 (May 10, 1854) .....22

Treaty With the Six Nations, 7 Stat. 33 (Jan. 9, 1789) .....15

Treaty With the Wyandot, 7 Stat. 16 (Jan. 21, 1785) .....14

Treaty With the Wyandot, 7 Stat. 28 (Jan. 9, 1789) .....15

**STATE TREATIES**

Treaty Between the Creek and Georgia (Nov. 12, 1785) ..... 15

Treaty Between the Creek and Georgia (Nov. 3, 1786) ..... 15

Treaty Between the Cherokee and Georgia and South Carolina (May 20, 1777) ..... 15

Treaty Between the Onondaga and New York, (Sept. 12, 1788) ..... 15

Treaty between the Overhill Band of Cherokee and North Carolina (July 20, 1777) ..... 15

Treaty Between the Overhill Band of Cherokee and Virginia (July 20, 1777) ..... 15

Treaties Between the St. John's and MicMac and Massachusetts (July 19, 1776) ..... 15

Treaty of Ft. Schuyler (Sept. 22, 1788) ..... 15

**ARTICLES**

Breyer, Stephen, The Cherokee Indians and The Supreme Court, 25 J. Sup. Ct. Hist. 215 (2000) ..... 11

Burke, Joseph C., The Cherokee Cases: A Study in Law, Politics and Morality, 21 Stan. L. Rev. 500 (1969) ..... 11



Clinton, Robert N., The Proclamation of 1763: Colonial Prelude to Two Centuries of Federal-State Conflict Over the Management of Indian Affairs, 69 B. U. L. Rev. 329 (1989) ... 14

Clinton, Robert N., There is No Federal Supremacy Clause for Indian Tribes, 34 Ariz. St. L. Rev. 113 (2002) ..... 16, 17

Clinton, Robert N., The Dormant Indian Commerce Clause, 27 Conn. L. Rev. 1056 (1995) ..... 17

Frickey, Philip P., A Common Law for Our Age of Colonialism: The Judicial Divestitute of Indian Tribal Authority Over Non-Members, 109 Yale L.J. 1 (1999) ..... 29

Johnson, Kenneth W., Sovereignty, Citizenship and the Indians, 15 Ariz. L. Rev. 973 (1973) ..... 17

**OTHER AUTHORITIES**

1 Documents of American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979 (Vine Deloria, Jr. & Raymond J. DeMallie eds., 1980) ..... 14, 15

2 Op. Att'y Gen. 110 (July 28, 1828) ..... 15

5 Annals of Cong. 902 (1796) ..... 19

S. Rep. No. 20-72 (1829) ..... 20

S. Rep. No. 41-268 (1870) ..... 21

S. Rep. No. 100-446 (1988).....30

H.R. Rep. No. 23-474 (1834).....21

Laws of the Colonial and State Governments Relating to Indians and Indian Affairs from 1633 to 1831, Inclusive (1979 reprint) .....11, 13, 17

The Federalist No. 42 (Clinton Rossiter ed. 1961).....16

2 The Founders' Constitution 529-530 (Phillip Kurland & Ralph Lerner eds., 1987) .....16

Francis P. Prucha, American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834 (1962).....17, 19, 20

2 Joseph Story, Commentaries on the Constitution § 1094 (1833).....16

Handbook of Federal Indian Law (Rennard Strickland ed., 1982).....*passim*

## INTERESTS OF *AMICUS CURIAE*

The United South and Eastern Tribes, Inc. (USET) is a non-profit inter-tribal organization founded in 1968. USET is dedicated to promoting Indian leadership, improving the quality of life for American Indians, and protecting Indian rights and natural resources on tribal lands.[1] USET includes twenty-four federally recognized tribal governments from an area stretching from Maine to Texas.[2]

USET has a strong interest in the "immunities and privileges available to * * * federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 67 Fed. Reg. 46328. These immunities, privileges and powers include the "deeply rooted" freedom of tribal

---

[1] Pursuant to Rule 37.3, the parties have consented to the submission of this brief. Letters of consent have been filed with the Clerk. No party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Rule 37.6.

[2] The members of USET are: the Eastern Band of Cherokees, the Mississippi Band of Choctaws, the Miccosukee Tribe, the Seminole Tribe of Florida, the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the St. Regis Band of Mohawk Indians, the Penobscot Indian Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Tunica-Biloxi Indians of Louisiana, the Poarch Band of Creek Indians, the Narragansett Indian Tribe, the Mashantucket Pequot Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), the Alabama-Coushatta Tribe of Texas, the Oneida Indian Nation, the Aroostook Band of Micmac Indians, the Catawba Indian Nation, the Jena Band of Choctaw Indians, the Mohegan Tribe of Connecticut, and the Cayuga Nation. See 67 Fed. Reg. 46328 (July 12, 2002) (list of federally recognized tribes published pursuant to 25 U.S.C. § 479a-1).

governments from state jurisdiction. *Rice v. Olson*, 324 U.S. 786, 789 (1945). Inyo County's execution of a state search warrant for tribal records held in a tribal building on tribal land, in order to defeat the tribe's privacy policy, was an assertion of state jurisdiction over a tribal government without congressional authority. The assertion of state control over tribal governments undermines cooperation between tribal governments and state and local governments through compacts and other agreements that respect the sovereignty of both parties. It also interferes with the federal policy of strengthening tribal governments, including tribal law enforcement.

USET has a particular interest in the County's claim that the search was valid because it had "inherent jurisdiction" over a tribal government, a claim that echoes the one squarely rejected in *Worcester v. Georgia*, 31 U.S. 515 (1832). *Worcester* answered that claim with historical proof that states had no jurisdiction over Indian tribes on tribal lands before the Constitution, and did not acquire any under the Constitution. The early treaties and laws that defined the relationships between the state and federal governments and tribal governments consist, in large part, of the heritage of USET's members. USET's brief discusses the scope of state jurisdiction over tribal governments in light of that history and the decisions of this Court.[3]

---

[3] The brief will not address the second and third questions presented in the County's petition.



## STATEMENT

The Bishop Paiute Tribe (the Tribe) is a federally-recognized tribe that governs tribal land located in Southern California. (JA 99). The Tribe conducts gaming under a compact with the State.[4]

The Tribe reported quarterly payroll information to the California Economic Development Department pursuant to its compact.[5] (CA RE 320). California maintains a system to compare employers' reports to income reported by persons receiving public assistance. That system noted a discrepancy between the earnings reported by the Tribe and the earnings reported to welfare authorities by three members of the Tribe employed in the tribal casino over the period of April to June 1998. (CA RE 266). A report of the discrepancy was sent to the Inyo County Department of Health and Human Services, which then forwarded the matter to the County District Attorney for investigation. An investigator in the District Attorney's office requested records for the employees from the Tribe. The Tribe responded in writing on February 28, 2000, that its long-standing policy was to release such records only with the written consent of the employee. (JA 103, ¶ 17).

---

[4] The Tribe's compact recites that "the State enters into this Compact out of respect for the sovereignty of the Tribe; * * * [and, among other things] to initiate a new era of tribal-state cooperation in areas of mutual concern." (JA 7). See also JA 102 (complaint ¶ 16). The compact was approved by the Secretary of the Interior on May 16, 2000. 65 Fed. Reg. 31189.

[5] Compact, § 10.3(b), JA 60.

Rather than seeking records from the tribal member employees directly, or obtaining their consent to disclosure by the Tribe,[6] the investigator sought and obtained a search warrant from the Superior Court. On March 23, 2000, the investigator, accompanied by sheriff's deputies, used bolt-cutters to enter a tribal storage building on tribal land, disregarding the protests of tribal officials that the search was unlawful. (JA 104). She seized tribal records containing information regarding the three tribal member employees named in the warrant, as well as many other tribal member employees not under investigation. (JA 149; CA RE 263-65 (search warrant return); JA 104).

Charges of wrongfully obtaining public assistance and medical care were later filed against the tribal member employees. On August 15, 2001 the prosecution dismissed the charges for lack of probable cause. Motion to Dismiss, *People v. Dewey*, Case No. MBCRF01-0027942-002/3 (Aug. 15, 2001).

In July 2000, the District Attorney sought more personnel records from the Tribe. (JA 104). The Tribe, through its attorney, agreed to release the records if the County provided a redacted copy of the tribal member employees' county welfare applications, which included authorization to disclose employment records. The County declined to request the records in a manner consistent with the Tribe's requirement of written consent.

On August 4, 2000, the Tribe filed suit in federal court. (JA 96-119). The District Court dismissed the complaint on November 22, 2000. (JA 120-141). The Court

---

[6] See Cal. Welf. & Inst. Code § 11004(a) (recipient is responsible for reporting facts material to correct determination of eligibility and grant).



of Appeals for the Ninth Circuit reversed in an amended opinion issued on May 20, 2002. (JA 145-179). This Court granted *certiorari* on December 2, 2002. (JA 180).

## SUMMARY OF ARGUMENT

"The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *Rice v. Olson*, 345 U.S. at 789. The County's forcible search of tribal government offices on tribal lands and its seizure of tribal records violated the Tribe's federally-protected rights to govern itself and to be free from unreasonable searches and seizures. State court warrants could not authorize the search and seizure of tribal government records from a tribal government building on tribal land because states do not have jurisdiction over tribal governments.

In this Court, the County has abandoned its reliance on Public Law 280, which gives some states jurisdiction to prosecute crimes by individual tribal members on some tribal lands, but does not confer any jurisdiction over tribal governments. It now claims it has "inherent jurisdiction" over the tribal government, derived from state sovereignty over all land within its borders, including Indian lands.

Our brief presents historical evidence that the colonies, and later the states, did not exercise inherent jurisdiction to enforce their laws on tribal lands. The Court considered and rejected the argument that the states had inherent jurisdiction over Indian lands in *Worcester v. Georgia*, 31 U.S. 515 (1832). Chief Justice Marshall's opinion in *Worcester* was based on the history of relations between colonial, and later state and national governments with Indian tribes before and after the adoption of the Constitution. Although the tribes surrendered aspects of their

sovereignty to the federal government, becoming "domestic dependent nations," they retained the power of internal self-government and were not subject to state laws. The states could not retain jurisdiction under the Constitution, because they did not have it earlier. Indeed, the Constitution recognized that tribal Indians were outside the jurisdiction of the states, exempting "Indians not taxed," from the apportionment of electors and direct taxes. The Fourteenth Amendment retained that exemption, affirming the sovereignty of Indian tribes over their internal affairs.

The historical record also refutes the particular claim that states had jurisdiction to enter tribal lands at will to enforce their criminal laws. National and state treaties before the Constitution included provisions that are inconsistent with an inherent state power to enter tribal lands to enforce state laws, even for off-reservation crimes. After the Constitution, Congress exercised its power under the Indian Commerce Clause to provide for *federal* law enforcement on tribal lands, and to require tribes to deliver tribal members to *federal* authorities when they were sought for off-reservation crimes. Congress could not and would not have done so, if states themselves had jurisdiction over tribal lands.

Statements in the Court's recent decision in *Nevada v. Hicks*, 533 U.S. 353 (2001), regarding "inherent" state jurisdiction on tribal lands do not control this case, which involves the search of a tribal government, not an individual member of a tribe, as in *Hicks*. The policy arguments offered by the County and its *amici* are without merit and should, in any event, be presented to Congress rather than to the Court.



## ARGUMENT

### STATES DO NOT HAVE JURISDICTION TO SEIZE TRIBAL RECORDS FROM TRIBAL GOVERNMENTS ON TRIBAL LANDS.

The execution of a search warrant by County officers for tribal records in a tribal government building on tribal land is an exercise of dominion and control over the Tribe. The Tribe adopted a general policy that it would not disclose personnel records without the employees' consent. That was an exercise of "the right of Indians to govern themselves," *Williams v. Lee*, 358 U.S. 217, 223 (1959), on their own land, not a regulation of non-Indians.

The search for and seizure of tribal records by means of a state court warrant infringes on tribal self-government in several ways. *First*, it directly overrides a tribal government decision to protect personnel records, which are tribal property. *Second*, it imposes the burdens of producing records and disrupting government activities on the Tribe. *Third*, it poses the risk of abuse for the purpose of harming the Tribe. "The power to tax is the power to destroy," *County of Yakima v. Confederated Tribes*, 502 U.S. 251, 258 (1992) (quoting *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819)); so is the power to intrude into a government's office and to seize its property. Cf. *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 187 (1988) (quoting *McCulloch* in the context of state regulation); *Hancock v. Train*, 426 U.S. 167, 178-79 (1976). Bolt cutters wielded by armed officers are no less a threat to sovereignty than taxes.

The County attempts to recast this case as tribal regulation of non-members in the image of *Nevada v. Hicks*, 533 U.S. 353 (2001). See Pet. Br. 28-30, Calif. Br. 11-18. A

lawsuit in federal district court asserting the Tribe's federal law right not to be searched is not tribal "regulation" of the County, any more than a private individual who sues to vindicate federal rights is thereby regulating the state. *Hicks* involved tribal court jurisdiction over state officers; it did not call into question the Tribe's ability to seek redress in federal court. *Id.* at 373 ("the tribe and tribe members are of course able to invoke the authority of the Federal Government and federal courts * * * to vindicate constitutional or other federal- and state- law rights.").[7]

The County no longer claims that a federal statute gave it the power to search tribal records in the possession of the tribal government on tribal land. Indeed, the County and its *amicus*, the State of California, abandon reliance on Public Law 280, 18 U.S.C. § 1162, which confers criminal jurisdiction over state offenses committed by tribal members within certain reservations, but has never been construed to apply to tribal governments. See Pet. Br. 25, n.11 ("Public Law 280 does not apply in this case; citing *Hicks*, 533 U.S. at 365); Calif. Br. 17 n.6 ("Public Law 280 has nothing to do with state law enforcement activity related to the commission of an off-reservation crime.").[8] Instead, the County and its state *amici* invoke "inherent jurisdiction" as the basis for the

---

7 This Court has not treated tribal challenges to the exercise of state power over them as subject to analysis under *Montana v. United States*, 450 U.S. 544 (1981). See, e.g., *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995).

8 To the contrary, in the context of civil regulation this Court has explicitly recognized that Public Law 280 is inapplicable to tribal governments. *Bryan v. Itasca County*, 426 U.S. 373, 389 (1976). Cf. *Puyallup Tribe v. Washington Dept. of Game*, 433 U.S. 165, 172 (1977) (state court lacked jurisdiction over tribe, although it had jurisdiction over tribal members).



search, relying on language in *Hicks*. (Pet. Br. 31; Calif. Br. 11).

The discussion of "inherent" state jurisdiction in *Hicks* does not control this case. That discussion was not essential to the Court's holding that tribal courts cannot adjudicate federal claims against state officers.[9] Moreover, *Hicks* involved a search of private property in an individual residence on individual trust land, not the search of tribal records in a tribal government building on tribal land. The assertion of state jurisdiction over a tribal government presents very different considerations from the assertion of state jurisdiction over individual members of a tribe who violate state law. Congress has never conferred state jurisdiction over tribal governments.

As we demonstrate more fully below, states do not have "inherent jurisdiction" over tribal governments. The states did not have such power before the Constitution was adopted, and, therefore, could not reserve it. The Constitution did not confer any new state jurisdiction over Indian tribes, which retained the right of self-government, subject to federal

---

9 "[T]his Court is bound by holdings, not language." *Alexander v. Sandoval*, 532 U.S. 275, 282 (2001). See also *BE & K Const. Co. v. NLRB*, 122 S. Ct. 2390, 2397 (2002). As Justice Souter's concurring opinion in *Hicks* shows, a determination whether the state officers had actual authority to enter tribal lands to execute a state search warrant was unnecessary to decide the question presented, which concerned the *tribe's* authority to regulate the conduct of state officers through its courts. See 533 U.S. at 375 ("while the Court gives emphasis to measuring tribal authority here in light of the State's interest in executing its own legal process to enforce state law governing off-reservation conduct, I would go right to *Montana's* rule that a tribe's civil jurisdiction generally stops short of nonmember defendants," subject to two inapplicable exceptions.).

authority through the Indian Commerce Clause and the Treaty Clause.

### A. States Do Not Have "Inherent Jurisdiction" Over Tribal Governments in Indian Country.

This Court has never held that states have inherent jurisdiction over tribal governments on tribal lands.[10] To do so now would overturn more than two centuries of federal Indian law based on the understanding that tribes are sovereigns subordinate to the authority of Congress, but not subordinate to the states. See, e.g., *Rice v. Olson*, 324 U.S. at 789; *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 154 (1980) ("tribal sovereignty is dependent on and subordinate to, only the Federal Government, not the States."). "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." *Williams v. Lee*, 358 U.S. at 219.[11] Indeed, Public Law 280, the federal statute on which the County relied in the courts below as a source of its power on the Tribe's land, would have been superfluous if state jurisdiction over tribal land arising from the states' pre-constitutional sovereignty, as the County now claims. Pet. Br. 31.

---

[10] In *Hicks*, the state officers entered the reservation to execute the warrant with the consent and cooperation of the tribe. 533 U.S. at 397 (O'Connor, J., concurring in the judgment).

[11] For example, the tribal termination acts of the 1950s made tribes subject to state laws upon termination, reflecting the assumption that tribes are not otherwise subject to state laws. See, e.g., *South Carolina v. Catawba Tribe, Inc.*, 476 U.S. 498, 508-09 (1986).



1. The original understanding of state, federal and tribal relations is set forth in *Worcester v. Georgia*, 31 U.S. 515 (1832). See also *Warren Trading Post v. Arizona Tax Comm'n*, 380 U.S. 685, 686-87 (1965) ("from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves free from state interference."). In *Worcester*, the Court squarely confronted a state's claim to inherent jurisdiction over a tribal government and its land.[12] Frustrated with the Cherokee Nation's refusal to cede more of its land through a federal treaty, Georgia enacted laws intended to coerce the tribe's removal to the West by asserting direct state control over its territory.[13] See 31 U.S. 521-28 (reproducing laws including § 6 of the act of Dec. 19, 1829, authorizing service of state process on tribal land.). Georgia prosecuted Samuel Worcester, a missionary from Vermont, and sentenced him to four years at hard labor for violating one of those laws

---

[12] The Court previously avoided deciding this politically contentious issue when it dismissed the Cherokee Nation's suit to invalidate the Georgia laws on jurisdictional grounds. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) (Court has no original jurisdiction over suit between tribe and state because a tribe is a "domestic dependent nation," not a foreign state within the meaning of Article III). See Joseph C. Burke, The Cherokee Cases: A Study in Law, Politics and Morality, 21 Stan. L. Rev. 500 (1969) (discussing background); Stephen Breyer, The Cherokee Indians and the Supreme Court, 25 J. Sup. Ct. Hist. 215 (2000).

[13] In 1802, Georgia became the last State to surrender its Western land claims in favor of the United States. In return, the federal government agreed to seek land cessions from the tribes within Georgia's borders. Laws of the Colonial and State Governments Relating to Indians and Indian Affairs from 1633 to 1831, Inclusive, 188-191 (1979 reprint). Congress ordered the compilation of colonial and state laws relating to Indian tribes in 1832 in response to the controversy over Georgia's imposition of its laws on the Cherokees. *Id.* at iv.

requiring non-Indians residing on the Cherokee reservation to obtain a state license.

The Court first addressed the contention that Georgia had territorial sovereignty over the Cherokee reservation. See *id.* at 596 (Baldwin, J., affirming the views expressed in his opinion in *Cherokee Nation v. Georgia*, 30 U.S. at 41-43). Chief Justice Marshall's opinion demonstrated that Georgia did not acquire sovereign jurisdiction over the Cherokee Nation as the successor to the British Crown, which treated the Indian tribes as "nations capable of * * * governing themselves under her protection." *Id.* at 548-49, 560 (the King could cede only what belonged to the Crown). Nor, as the Chief Justice explained, did Georgia acquire any power over tribes or tribal lands through the Constitution nor through national treaties, which placed the Cherokees under the protection of the national government.

The Court held that Georgia had no authority to extend its laws to the Cherokee reservation. 31 U.S. at 560. The Chief Justice recognized, however, that Georgia's lack of authority to apply its law to tribal land was insufficient to issue a writ of error. *Id.* at 561 (the Court would have no power to grant relief if the objection to the law "was confined to its extra-territorial operation"). He therefore went on to show that the state's laws were also "repugnant to the constitution, laws, and treaties of the United States," including the treaties with the Cherokees. *Id.* [14]

[14] The *Worcester* Court's rejection of inherent state jurisdiction over the Indian tribal land was therefore not limited to land protected by treaties expressly exempting the lands from state control. Contra *Hicks*, 533 U.S. 361 n.4.



"Despite the bitter criticism and defiance of Georgia which refused to obey this Court's mandate in *Worcester*, the broad principles of that decision came to be accepted as law." *Williams v. Lee*, 358 U.S. at 219. The Court has adhered to the "basic policy" of *Worcester*, although, "[o]ver the years this Court has modified these principles in cases where essential tribal relations were not involved and where the rights of Indians would not be jeopardized." *Id.*[15]

2. *Worcester* is solidly grounded in history. Under the British Crown, tribes exercised self-government within their own territories and entered into treaties with colonial authorities as sovereigns.[16] In the Proclamation of 1763, the Crown stripped the individual colonies of power to enter into treaties with Indian nations, centralizing responsibility in two superintendents. At the same time, the Crown pursued a policy of separation, establishing definite borders between the land controlled by the colonial

[15] The Court has recently "shift[ed] its approach" towards federal preemption rather than relying solely on tribal sovereignty. See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 n.9 (1980); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172 (1973). The cases in which the Court has done so, however, involved balancing the three sovereigns' interests in regulating the on-reservation activities of non-Indians. The Court has never "balanced" state jurisdiction over the tribe itself. Moreover, the Court continues to acknowledge the tribes' "right of internal self-government." *United States v. Wheeler*, 435 U.S. 313, 322 (1978); *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

[16] The colonies relied on the tribes to turn over offenders. See, e.g. Laws of the Colonial and State Governments Relating to Indians and Indian Affairs from 1633 to 1831, Inclusive, 37, 40 (Connecticut 1672). Colonial governments extended their authority over Indians only after some tribes ceased to govern their land and their members. See *Worcester*, 31 U.S. at 580 (M'Lean, J.) (Massachusetts, Connecticut and Rhode Island and others extended state laws over remnants of tribes that had lost the power of self-government).

governments and available for settlement on the one hand and tribal lands on the other. See Robert N. Clinton, The Proclamation of 1763: Colonial Prelude to Two Centuries of Federal-State Conflict Over the Management of Indian Affairs, 69 B.U. L. Rev. 329 (1989).

After Independence, the state and national governments contested responsibility for Indian affairs. The Articles of Confederation left room for debate over whether the states, or only the national government, could enter into treaties with the Indian nations to acquire land. The states claimed the authority to enter into such treaties as the successors to the right of preemption, which was an exclusive right to buy land from the tribes for resale to non-Indians. Most importantly for present purposes, neither the states nor the national government claimed inherent jurisdiction to enforce their criminal laws *within* the territory occupied by the tribes.

Punishments of crimes in Indian country were governed by treaty, not by domestic state law. The new nation's first treaty was with the Delaware. Article IV of that treaty provided that neither the United States nor the tribe would punish "citizens of the other" except by a joint trial "by judges or juries of both parties." Treaty with the Delawares, 7 Stat. 13 (Sept. 17, 1778) (App. 56a); see also Treaty with the Cherokee, art. 4th (July 22, 1779), *reprinted in* 1 Documents in American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979 (Vine Deloria, Jr. & Raymond J. DeMallie eds., 1980), pp. 79-81. After the Revolutionary War ended, national treaties specifically required the tribes to deliver members who committed crimes against non-Indians



to the national government for punishment.[17] Before the Constitution became effective, states also entered into similar treaties with tribes.[18] Those treaties did not assert inherent

---

17 See, e.g., Treaty with the Wyandot, 7 Stat. 16, art. IX (Jan. 21, 1785); Treaty with the Cherokee, 7 Stat. 18, arts. VI and VII (Nov. 28, 1785); Treaty with the Choctaw, 7 Stat. 21, arts. V and VI (Jan. 3, 1786); Treaty with the Chickasaw, 7 Stat. 24, arts. V and VI (Jan. 10, 1786); Treaty with the Shawnee, 7 Stat. 26 , art. III (Jan. 31, 1786); Treaty with the Wyandot, 7 Stat. 28, art. V (Jan. 9, 1789); Treaty with the Six Nations [Treaty of Ft. Harmar], 7 Stat. 33, separate art. (Jan. 9, 1789).

18 See 1 Documents of American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979 (Vine Deloria, Jr. & Raymond J. DeMallie, eds. 1980), e.g., Treaty between the St. John's and MicMac and Massachusetts, arts. 3rd & 4th (July 19, 1776) (mutual promises of tribe and state to make satisfaction to party injured by its citizens), pp. 68-69; Treaty between the Cherokee and Georgia and South Carolina, art. V (May 20, 1777) (Cherokees agree to apprehend and deliver Indians who murder whites on tribal land; State agrees to execute whites who murder Indians in the presence of the tribe), p. 72; Treaty between the Overhill Band of Cherokee and North Carolina, art. 4th (July 20, 1777) (Cherokees agree to execute tribal member who commits murder in the presence of justices of the peace; state agrees to try and execute whites who murder Indians), p.74; Treaty between the Overhill Band of Cherokee and Virginia, art. 4 (July 20, 1777) (same); Treaty between the Creek and Georgia, arts. IV and V (Nov. 12, 1785) (Creek agree to give notice to the governor of punishment to be inflicted on a member of the tribe who commits a capital crime against a white; State agrees to give tribe notice of punishment of white who commits a capital crime against an Indian), p. 87(App. 39-40a); Treaty Between the Creek and Georgia, arts. Fifth and Sixth (Nov. 3, 1786) (same) (App. 42a); Treaty of Ft. Schuyler, 1788, art. IV (Sept. 22, 1788) (Oneida Nation agrees to apprehend non-Indian intruders, felons and offenders at the Governor's request so they can be brought to justice), pp. 97-99 (App. 38a); Treaty between the Onondaga and New York, art. Sixth (Sept. 12, 1788) (same), pp. 94-95. The pre-constitutional state treaties, like federal treaties, were understood to be agreements with sovereign governments. See 2 Op. Atty. Gen. 110 (July 28, 1828) (Georgia is bound by its pre-constitutional treaties extinguishing its claims for property destroyed earlier; Creeks are an independent nation

Footnote cont'd

state sovereignty over tribal lands. See Robert N. Clinton, There is No Federal Supremacy Clause for Indian Tribes, 34 Ariz. St. L. Rev. 113, 119-120 (2002). This course of treaty-making is inconsistent with the claim that the states acquired sovereignty over tribes within their borders upon Independence.

3. The adoption of the Constitution did not confer any state jurisdiction over Indian tribes. "The Constitution vests the Federal Government with exclusive authority over relations with Indian tribes." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 764 (1985)(citations omitted); see also *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 234 (1985). The Framers of the Constitution were aware of, and sought to end the uncertainty about responsibility for Indian affairs under the Articles of Confederation. James Madison, The Federalist No. 42, 268-69 (Clinton Rossiter ed., 1961) (describing Articles as "obscure and contradictory"); see also 2 The Founders' Constitution 529 (P. Kurland & R. Lerner eds., 1987)(reprinting exchange of letters between James Madison and James Monroe); *Cherokee Nation v. Georgia*, 30 U.S. 1, 36 (1831) (opinion of Marshall, Ch. J.); 2 Joseph Story, Commentaries on the Constitution § 1094 at 550 (1833).

Tribal sovereignty and the freedom of Indian tribes from state jurisdiction are implicit in the structure of the Constitution. Cf. *Alden v. Maine*, 527 U.S. 706, 729 (1999)(state sovereign immunity is implicit in the structure of the Constitution). Article I, Section 8, Clause 3, the "Indian Commerce Clause," assigns to Congress the power to regulate

---

Footnote cont'd

whose "territory is inviolable by any other sovereignty" and "governed solely by their own laws.").



commerce "with the Indian tribes." This language was simplified by the Committee of Style from commerce "with Indians, within the Limits of any State, not subject to the laws thereof." 2 The Founders' Constitution at 530 (reprinting excerpts from the records of the Constitutional Convention). The streamlined language reflected the understanding that tribal Indians were, by definition, governed by the law of the tribe, and not by state law. Kenneth W. Johnson, Sovereignty, Citizenship and the Indians, 15 Ariz. L. Rev. 973, 983 (1973); see also Clinton, No Federal Supremacy Clause, 34 Ariz. St. L. Rev. 130-32; Robert N. Clinton, The Dormant Indian Commerce Clause, 27 Conn. L. Rev. 1056, 1147-1164 (1995). Art. I, Section 2, Clause 3, excluded "Indians not taxed" from State populations for purposes of apportionment of the House of Representatives and direct taxes. That provision also recognized that tribal Indians were not subject to state laws. Handbook of Federal Indian Law 388 (1982 ed.). Art. I, Section 10, Clause 1 forbade the States to enter into treaties. Thus, when Georgia at last agreed to cede its Western land claims to the United States in 1802, it did so in exchange for a promise from the United States to "extinguish the Indian title" to lands within Georgia, because the state could no longer do so for itself. Laws of the Colonial and State Governments at 188, 190.

5. Beginning in the First Congress, the federal government exercised its power to regulate Indian affairs by statute as well as by treaty. See generally Francis P. Prucha, American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834, 188-212 (1962) (describing the history of criminal jurisdiction in Indian country). The first Indian Trade and Intercourse Act provided:

> That if any citizen or inhabitant of the United States or of the territorial districts of the United States, shall go into any town,

settlement or territory belonging to any nation or tribe of Indians, and there shall commit any crime upon, or trespass against, the person or property of any peaceable or friendly Indian or Indians, which, *if committed within the jurisdiction of any state*, or within the jurisdiction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof. 1 Stat. 137, § 5 (July 22, 1790) (App. 2-3a) (emphasis added).

Section 6 of the Act assigned jurisdiction of offenses by non-Indians on tribal lands to the federal courts under the procedures established in the First Judiciary Act. The plain language of the Act acknowledges that the states did *not* have jurisdiction over tribal lands, and that the federal government, not the state governments, had responsibility for law enforcement, just as it did within federal enclaves. See Prucha, American Indian Policy at 190.[12]

When Congress renewed the Indian Trade and Intercourse Act in 1793, it included federal authority to prosecute non-Indians for crimes against Indians within "any town, settlement or territory belonging to any nation or tribe

[12] As this Court expressly recognized in *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974), the Indian Trade and Intercourse Acts applied to Indian lands within the existing states, as well as to federal lands organized as territories.



of Indians" which would be punishable under the law of the state or territory if committed "within the jurisdiction of any state, or within the jurisdiction of either of such [territorial] districts." 1 Stat. 330, §§ 4, 10 (March 1, 1793) (App. 5a, 7a). In addition, Congress added a new section authorizing the President (within the existing states), or the territorial governors (within the territories) to cause non-Indians subject to prosecution under the Act for crimes "within any town, settlement or territory belonging to any nation or tribe of Indians, to cause such person or persons to be apprehended, and brought into either of the United States or of the said [territorial] districts." (App. 8a) That special rendition provision confirms that state criminal jurisdiction did not extend to land "belonging to any nation or tribe of Indians." See also *id.*, § 13 (differentiating trade with "Indians living on land surrounded by settlements of the citizens of the United States, and being within the jurisdiction of any of the individual states" from trade with tribal Indians, who were not) (App. 9a).

The 1796 renewal of the Act responded to criticisms of the previous versions for extending federal law to crimes against Indians, but not to crimes by them. See Prucha, American Indian Policy, at 192; 5 Annals of Congress at 902 (April 9, 1796). The Act established a procedure for non-Indians to seek redress if "any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or across the said boundary line, into any state or territory inhabited by citizens of the United States" and commit crimes there. *Id.* § 14. (App. 15-16a). The injured party was required to apply to federal officials, who would in turn seek satisfaction from the tribe. The federal government promised to indemnify the injured party as long as the injured party refrained from "crossing over the line on any of the Indian

lands."[20] See Prucha, American Indian Policy at 194-98 (describing operation in practice).[21] That authority would have been superfluous at best and a serious encroachment on state sovereignty at worst, if states had had jurisdiction to enter tribal lands to enforce the law themselves.[22]

Congress did not extend federal power to crimes by Indians *inside* Indian country until 1817. 3 Stat. 383; Prucha, American Indian Policy at 193.[23] That provision was amended in the final Indian Trade and Intercourse Act of

---

[20] Section 14 did not limit the power to arrest Indians if found outside Indian lands.

[21] Section 19 of the 1834 Act made it the duty of federal Indian superintendents and agents to arrest "all Indians accused of committing any crime, offence or misdemeanor, and all other persons who may have committed crimes or offences within any state or territory and have fled into the Indian country" either by demanding the tribe to produce them or "by such other means as the President may authorize." (App. 26a). See S. Rep. No. 20-72, at 43 (1829) (Secretary of War's submission explaining need to authorize federal officials to aid in the apprehension of Indians sought for off-reservation crimes).

[22] The relevant provisions were re-enacted in 1799 and as permanent legislation in 1802. Prucha, American Indian Policy at 192. 1 Stat. 743; 2 Stat. 139.

[23] Justice McLean, as Circuit Justice, reported that the 1817 statute was passed in response to an 1816 decision dismissing an indictment of two Indians for killing a non-Indian on a public road within the Cherokee reservation. *United States v. Bailey*, 24 F. Cas. 937 (C.C.D. Tenn. 1834). In *Bailey*, Justice McLean ruled that the Indian commerce clause did not authorize Congress to apply federal law to crimes by non-Indians against non-Indians committed on Indian lands. 24 F. Cas. at 940.



1834, 4 Stat. 729, and is now codified at 18 U.S.C. § 1152.[24] (App. 28a).

6. The Fourteenth Amendment reaffirmed the constitutional status of tribal governments, again excluding "Indians not taxed," from the apportionment of electors and direct taxes. In 1870, the Senate Committee on the Judiciary issued a report on the effect of the Fourteenth Amendment on the citizenship of tribal Indians. S. Rep. 41-268, at 9-10 (1870). After surveying the history of federal Indian law, the Committee opined that the Fourteenth Amendment did not extend citizenship to members of the Indian tribes, because they were not "subject to the jurisdiction" of the United States:

> In the opinion of your committee, the Constitution and the treaties, acts of Congress, and judicial decisions above referred to, all speak the same language upon this subject, and all point to the conclusion that the Indians, in tribal condition, have never been subject to the jurisdiction of the United States in the sense in which the term *jurisdiction* is employed in the fourteenth amendment to the Constitution. The Government has asserted a political supremacy over the Indians, and the treaties and laws quoted from present these tribes as "domestic dependent nations," separated from

---

[24] Congress exempted crimes by Indians against Indians. § 25. The House report regarding the 1834 Act explained that crimes by Indians against Indians had been covered by the 1817 Act, which applied "to all persons in the Indian country, without exception," but "it is not perceived that we can with any justice or propriety extend our laws to offences committed by Indians against Indians, at any place within their own limits." H.R. Rep. No. 23-474, at 13 (1834).

> the States of the Union within whose limits they are located, and exempt from the operation of State laws; and not otherwise subject to the control of the United States than is consistent with their character as separate political communities or states.

There is no room within this framework for inherent state jurisdiction over an Indian tribal government on tribal land.

7. This Court's decisions of the immediate post-Civil War era reflect the same understanding. In *The Kansas Indians*, 72 U.S. 737, 754 (1867), the Court held that members of three Indian tribes were not subject to state taxes. That decision rested on the general rule that states lacked jurisdiction over tribal lands, not on a specific prohibition in a federal treaty. Although one of the tribes had a treaty promising that its land would remain outside state jurisdiction, (Treaty with the Shawnee, 10 Stat. 1053 (May 10, 1854)), the other two tribes did not have such a guarantee. See *id.* at 759 (rejecting distinction between the Shawnee and the Wea based on Treaty with the Kaskaskia, 10 Stat. 1082 (May 30, 1854)); *id.* at 760 (same as to Miami tribe based on Treaty with the Miami, 10 Stat. 1093 (June 5, 1854)). Similarly, in *The New York Indians*, 72 U.S. 761 (1867), the Court held that Seneca reservation land was exempt from state taxation because the tribe had not yet relinquished jurisdiction, even though the specific parcels had been sold to non-Indians and the federal government had approved the eventual transfer of the reservation. In a related case involving the same 1838 federal treaty, the Court also held that the *State* had no authority to remove Seneca Indians from land that had been ceded in the treaty, and that removal was the sole responsibility of the federal government. *Fellows v.*



*Blacksmith*, 60 U.S. 366 (1856). The Senecas' treaty reserved the land for the Senecas' "free use and enjoyment."[25] Thus, the holdings in *The New York Indians* and *Fellows v. Blacksmith* cannot have been based on an express guarantee that "their lands would never be subjected to the jurisdiction of any State or Territory." Cf. *Hicks*, 533 U.S. at 362 n.4.

8. The sole authority directly cited by the County and its state *amicus* for the contrary proposition that states have inherent jurisdiction over tribal governments and tribal lands is *Hicks*. It would be surprising that an "inherent" state power "mandated by the nature of American federalism" (Calif. Br. 18) made its first appearance in 2001. And, as we have shown, it is not true (as to Indian country) that "as sovereigns succeeding to Great Britain's territorial sovereignty, the States have had inherent authority to perform core governmental functions, like the investigation of crimes, throughout their territory from the time of the Constitution's framing." (Calif. Br. 19). The discussion of "inherent jurisdiction" in *Hicks* is not based on historical evidence contradicting Chief Justice Marshall's account of relations among colonial, then state and federal governments on the one hand, and Indian tribes on the other. Rather, it appears to be based on late nineteenth century cases that tie state jurisdiction over *non-Indians* to the language of the treaties that create particular Indian reservations. See also *Organized Village of Kake v. Egan*, 369 U.S. 60, 72 (1962), cited in *Hicks*, 533 U.S. at 362. A closer examination of those cases shows that they do not support fundamentally inverting

---

[25] 7 Stat. 44, Art. III (Nov. 11, 1794). Article VII of the Treaty of Canandaigua did provide for the resolution of disputes arising from the "misconduct of individuals" between the tribal government and the federal government, recognizing the absence of state jurisdiction to enforce state laws on tribal land.

federal Indian law to allow states to exercise jurisdiction over tribal governments unless expressly forbidden by treaty.

The idea that state jurisdiction depends on the specific terms of a federal statute or treaty, rather than on the general tribal sovereignty principle proclaimed in *Worcester*, seems to have originated in *Langford v. Monteith*, 102 U.S. 145 (1880). *Langford* held that a *territorial* court had territorial jurisdiction over a suit to evict a tenant from Indian land, overruling *Harkness v. Hyde*, 98 U.S. 476 (1878) (process from a territorial court cannot be served on a defendant on an Indian reservation). Because *Langford* involved a territorial court exercising Congress' plenary powers over the territories, it provides no support for *state* jurisdiction, inherent or otherwise. But see *Organized Village of Kake*, 369 U.S. at 72 (citing *Langford* as support for the proposition that "a reservation was in many cases a part of the surrounding State or Territory.").[26] The same is true of *Utah*

[26] Justice Miller's opinion for the Court in *Langford* cites his opinion as Circuit Justice in *United States v. Ward*, 28 F. Cas. 397 (C.C.D. Kan. 1863), which holds that a non-Indian could not be tried in federal court for killing a non-Indian on an Indian reservation because it was not within the "exclusive" jurisdiction of the United States and was within the jurisdiction of the state of Kansas. The Circuit Court relied on the absence of an explicit promise in the treaty recognizing the tribe's reservation that it would remain outside the jurisdiction of the state. The full Court rejected this contention four years later in *The Kansas Indians*. Furthermore, the Indian Trade and Intercourse Act did not require federal jurisdiction to be exclusive. It created federal jurisdiction over Indian country on the *same basis* as federal jurisdiction over lands within the exclusive jurisdiction of the United States. Thus, the existence of state jurisdiction was arguably irrelevant to the availability of federal criminal jurisdiction under the Act. Cf. 25 U.S.C. § 233 (statute conferring concurrent jurisdiction on the state). *Ward* nevertheless "may have had an important influence" on the Court's later decision in *McBratney*. Handbook of Federal Indian Law 264 n.44 (1982 ed.).



*& N. Ry. Co. v. Fisher*, 116 U.S. 28 (1885), which held that the *territory* of Idaho had jurisdiction to tax land within the boundaries of an Indian reservation set aside by Congress for the railroad. But see *Hicks*, 533 U.S. at 362 (citing *Utah & N. Ry.* as support for the proposition that an Indian reservation is now ordinarily considered part of the territory of the state).[27]

A year after *Langford*, the Court decided *United States v. McBratney*, 104 U.S. 621 (1881). *McBratney* involved a murder by a non-Indian of a non-Indian on the Ute reservation in Colorado. The Court held that the state courts, not the federal district court, had jurisdiction to try the case. The Court read the statute admitting Colorado as a state as "necessarily repeal[ing]" the provisions of the federal treaty with the Utes precluding state jurisdiction, because Congress had expressly exempted Indian land from the state's jurisdiction when it wished to do so. *Id.* at 623. The Court was careful, however, to stress that its decision was not about the rights of tribal governments. *Id.* at 624.

The Court's focus in *McBratney* on federalism rather than tribal sovereignty was understandable. Congress had provided for federal jurisdiction over crimes by non-Indians on Indian reservations in 1817, but there were questions about whether Congress could legislate with respect to crimes that

[27] *Hicks* also cites the 1958 edition of the Handbook of Federal Indian Law 510 & n.1. The 1982 (and most current) edition of this treatise reads: "tribal lands within the boundaries of state or organized territories have always been considered to be *geographically* part of the respective state or territory. *This was so even when the state had no jurisdiction over the tribal lands.*" p. 649 (emphasis added; footnotes omitted). The authors of the 1982 edition caution against reliance on the 1958 edition, which was written at a time when the Department of the Interior was firmly committed to a policy of terminating tribal governments. Handbook of Federal Indian Law at *ix* (1982 ed.).

did not involve Indians under the Indian Commerce Clause. See n. 23, *supra*. This was unimportant in the territories, where Congress exercised legislative jurisdiction over crimes by non-Indians, but became important in the new states. Reading the act of admission as shifting that jurisdiction to the newly-admitted state when it would not affect tribal members or tribal self-government was an attractive solution. *McBratney's* reading of federal statutes and federal treaties may not be entirely convincing, but the decision clearly rests on federal law, not on inherent pre-constitutional jurisdiction over a tribal ~~government~~.[28]

Subsequently, in *Draper v. United States*, 164 U.S. 240 (1896), the Court held that the state courts of Montana rather than the federal courts also had jurisdiction over crimes involving non-Indians on the Crow reservation, notwithstanding a provision in the act of admission leaving Indian lands "under the absolute jurisdiction and control of the congress." The Court explained that, '[a]s equality of statehood is the rule, the words relied on here to create an exception cannot be construed as doing so, if, by any reasonable meaning, they can be otherwise construed." *Id.* at 244-45. With that principle of construction in mind, the Court read the statutory reservation of federal jurisdiction as limited to preventing lands allotted to the Indians in severalty from falling under state law so as to impair federal restrictions on alienation, but not as barring state criminal jurisdiction over crimes involving non-Indians. In *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499 (1946), the Court

---

[28] *McBratney* has been criticized as unclear and inconsistent with general principles of statutory construction. Handbook of Federal Indian Law 264-66 (1982 ed.) (doubting "that the same result would be reached today in a case of first impression). *McBratney* should, in any event, not be extended.



reasoned that because Colorado had been admitted on an "equal footing" with the original states, *McBratney* must imply that the original states also had jurisdiction to prosecute offenses involving only non-Indians on tribal lands.

*McBratney*, *Draper* and *Martin* do not recognize a broad "inherent" general state jurisdiction over tribal governments on Indian lands. None of the cases involve tribes or Indians. From the Court's perspective, it may have seemed of little importance to the tribe whether prosecutions of non-Indians for crimes against non-Indians took place in state or federal court, so long as no tribal interests were perceived to be at stake.

When the Court saw tribal interests at stake, it adhered to the rule forbidding state jurisdiction. In *United States v. Kagama*, 118 U.S. 375 (1886), the Court upheld the constitutionality of the Indian Major Crimes Act. *Kagama* involved the murder of one Indian by another Indian within the Hoopa Valley reservation in California. The Court acknowledged that murder is "in most all cases of its commission punishable by the laws of the states." *Id.* at 383. That could not be so of tribal Indians, however, who "owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies." *Id.* The Court expressly reaffirmed *Worcester* as the rule applicable to state power over tribal Indians within reservation lands. *Id.* at 384. The common thread uniting *Kagama* to *Worcester* is that tribes have a government-to-government relationship with the federal government, and are not subordinate to the states. States therefore do not have jurisdiction when tribal interests are at stake. *Donnelly v. United States*, 228 U.S. 243, 271-72 (1913) (holding *McBratney* inapplicable to crimes by or against Indians); *Williams v. United States*, 327 U.S. 711, 714 & n.10 (1946) (Arizona may have jurisdiction over offenses between non-Indians, but not offenses by an

Indian against a non-Indian); *Williams v. Lee*, 358 U.S. 217, 219 (1959) (same). Those cases are inconsistent with the idea that states have the same jurisdiction over tribal lands as over non-tribal lands within their borders.[29]

### B. *Hicks* Should Not Be Extended to Searches of Tribal Governments.

The County and its *amici* do not make a serious effort to identify an historical basis for an "inherent" state jurisdiction to execute search warrants for tribal government records in tribal government offices on tribal land. Nor could they. Instead, they extrapolate the rule they want from language in *Hicks*. Thus, they are arguing for a new judicially-constructed rule that is in conflict with the many decisions of this Court based on the general principle that states do not have sovereignty over tribes.

If the Court has common law power to change the relationship between state and tribal governments without legislation, it should only exercise it in accord with the federal Indian policies adopted by the political branches of

---

[29] It is also incorrect to reason from state authority to serve process within federal enclaves that states must also have such authority within tribal lands. But see U.S. Br. 22. State authority to serve process in federal enclaves is based on an express reservation in the state's cession of land to the United States and the acceptance of those terms by the United States pursuant to Art. I, § 8, cl. 17. Absent such a reservation, a state would not have such power. See Joseph Story, Commentaries on the Constitution §§ 1219-20 (1833), *reprinted in* 3 The Founders' Constitution 237 (1987). Indian tribes do not enter into such agreements with states as a condition of occupying their lands.



government.[30] The policies of the allotment era reflected in *McBratney*, and the policies of the termination era reflected in *Martin*, have been discredited.[31] See *Moe v. Confederated Tribes*, 425 U.S. 463, 479 (1976) (allotment); Handbook of Federal Indian Law 180-88 (1982 ed.) (termination). Today, congressional Indian policy supports tribal sovereignty and stronger tribal institutions. *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 856 (1985) ("Our cases have recognized that Congress is committed to a policy of supporting tribal self-government and self-determination"); 25 U.S.C. §§ 450-450n (Indian Self-Determination and Education Assistance Act); 25 U.S.C. §§ 1901-1963 (Indian Child Welfare Act). The Court should not adopt by its judgment a rule of law that is at odds with that congressional policy.

Five years ago, this Court declined to reexamine the doctrine of tribal sovereign immunity, recognizing that Congress was free to do so if it chose, and that the Court should hesitate to act where Congress has refrained from acting within its sphere. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 758-60 (1998). The same considerations should constrain the Court in this case. The County and its *amici* make policy arguments about the need to extend state jurisdiction throughout reservations. As the brief for the National Congress of American Indians shows, those public safety arguments are

---

[30] This point is developed in Philip P. Frickey, A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority Over NonMembers, 109 Yale L. J. 1, 79 (1999).

[31] To say that the Court should not breathe new life into discredited policies is not to say that the Court does not apply the statutes Congress enacted during the allotment era. See *Brendale v. Confederated Tribes of the Yakima Nation*, 492 U.S. 408, 427 (1989) (opinion of White, J.).

unfounded. When Congress was faced with similar arguments for extending state sovereignty over tribal gaming, it declined to do so. S. Rep. No. 100-446, at 1-3, 5 (1988) *reprinted in* 1988 U.S.C.C.A.N. 3071, 3075. Instead, Congress chose to respect tribal sovereignty and to permit states to regulate only within the framework of federal law by means of a compact negotiated with the tribe as a co-equal sovereign. The same respect for tribal sovereignty required the County to seek records from the Tribe by means consistent with the Tribe's policies and its right of self-government.

In this case, as in *Kiowa*, the Court should be reluctant to diminish tribal sovereignty because "Congress is in a position to weigh and accommodate the competing policy concerns and reliance interests" through legislation. 523 U.S. at 759.

## CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

WILLIAM W. TAYLOR, III
*Counsel of Record*
ELEANOR H. SMITH
DAVID A. REISER
Zuckerman Spaeder LLP
1201 Connecticut Ave., N.W.
Washington, DC 20036
(202) 778-1800
*Counsel for Amicus*

February 27, 2003



## INDIAN TRADE AND INTERCOURSE ACT OF 1790
1 Stat. 137

An Act to Regulate Trade and Intercourse With the Indian Tribes.

**SECTION 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall appoint for that purpose; which superintendent, or other person so appointed, shall, on application, issue such license to any proper person, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the President of the United States for the time being, for the use of the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as now are, or hereafter shall be made for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons by them licensed as aforesaid, shall be governed in all things touching the said trade and intercourse, by such rules and regulations as the President shall prescribe. And no other person shall be permitted to carry on any trade or intercourse with the Indians without such license as aforesaid. No license shall be granted for a longer term than two years. *Provided nevertheless*, That the President may make such order respecting the tribes surrounded in their settlements by the citizens of the United States, as to secure an intercourse without license, if he may deem it proper.

**Sec. 2.** *And be it further enacted*, That the superintendent, or person issuing such license, shall have full power and

authority to recall all such licenses as he may have issued, if the person so licensed shall transgress any of the regulations or restrictions provided for the government of trade and intercourse with the Indian tribes, and shall put in suit such bonds as he may have taken, immediately on the breach of any condition in said bond: *Provided always*, That if it shall appear on trial, that the person from whom such license shall have been recalled, has not offended against any of the provisions of this act, or the regulations prescribed for the trade and intercourse with the Indian tribes, he shall be entitled to receive a new license.

**SEC. 3.** *And be it further enacted*, That every person who shall attempt to trade with the Indian tribes, or to be found in the Indian country with such merchandise in his possession as are usually vended to the Indians, without a license first had and obtained, as in this act prescribed, and being thereof convicted in any court proper to try the same, shall forfeit all the merchandise so offered for sale to the Indian tribes, or so found in the Indian country, which forfeiture shall be one half to the benefit of the person prosecuting, and the other half to the benefit of the United States.

**SEC. 4.** *And be it enacted and declared*, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

**SEC. 5.** *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit any crime upon, or trespass against, the person or property of any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the jurisdiction of either of the said



districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white in habitant thereof.

**SEC. 6.** *And be it further enacted*, That for any of the crimes or offences aforesaid, the like proceedings shall be had for apprehending, imprisoning or bailing the offender, as the case may be, and for recognizing the witnesses for their appearance to testify in the case, and where the offender shall be committed, or the witnesses shall be in a district other than that in which the offence is to be tried, for the removal of the offender and the witnesses or either of them, as the case may be, to the district in which the trial is to be had, as by the act to establish the judicial courts of the United States, are directed for any crimes or offenses against the United States.

**SEC. 7.** *And be it further enacted*, That this act shall be in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

APPROVED, July 22, 1790.

## INDIAN TRADE AND INTERCOURSE ACT OF 1793

1 Stat. 329

An Act to Regulate Trade and Intercourse with the Indian Tribes.

**SECTION 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license under the hand and seal of the superintendent of the department, or of such other person, as the President of the United States shall authorize to grant licenses for that

purpose; which superintendent, or person so authorized shall, on application, issue such license, for a term not exceeding two years, to any proper person, who shall enter into bond with one or more sureties approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as are or shall be made, for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons licensed, as aforesaid, shall be governed, in all things touching the said trade and intercourse, by such rules and regulations, as the President of the United States shall prescribe.

**SEC. 2.** *And be it further enacted*, That the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations or restrictions, provided for the government of trade and intercourse with the Indian tribes, and shall put in suit such bonds, as he may have taken, on the breach of any condition therein contained.

**SEC. 3.** *And be it further enacted*, That every person, who shall attempt to trade with the Indian tribes, or shall be found in the Indian country, with such merchandise in his possession, as are usually vended to the Indians, without lawful license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, in the Indian country, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days, at the discretion of the court, in which the trial shall be: *Provided*, That any citizen of the United States, merely travelling through any Indian town or territory, shall be at liberty to purchase, by exchange or otherwise, such articles as may be necessary for his subsistence, without incurring any penalty.



**SEC. 4.** *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement, or territory, belonging to any nation or tribe of Indians, and shall there commit murder, robbery, larceny, trespass or other crime, against the person or property of any friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the jurisdiction of either of the said districts, against a citizen thereof, would be punishable by the laws of such state or district, such offender shall be subject the same punishment, as if the offence had been committed within the state or district, to which he or she may belong, against a citizen thereof.

**SEC. 5.** *And be it further enacted*, That if any such citizen or inhabitant shall make a settlement on lands belonging to any Indian tribe, or shall survey such lands, or designate their boundaries, by marking trees, or otherwise, for the purpose of settlement, he shall forfeit a sum not exceeding one thousand dollars, nor less than one hundred dollars, and suffer imprisonment not exceeding twelve months, in the discretion of the court, before whom the trial shall be: And it shall, moreover, be lawful for the President of the United States, to take such measures, as he may judge necessary, to remove from lands belonging to any Indian tribe, any citizens or inhabitants of the United States, who have made, or shall hereafter make, or attempt to make a settlement thereon.

**SEC. 6.** *And be it further enacted*, That no person shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person, as the President shall appoint, is hereby authorized to grant, on the same terms, conditions and restrictions, as other licenses are to be granted under this act: *Provided also*, That every person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they shall have been brought out

of the Indian country, shall make a particular return, to the superintendent, or other person, from whom he obtained his license, of every horse by him purchased, as aforesaid, describing such horses, by their color, height and other natural or artificial marks, under the penalties contained in their respective bonds. And every person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall, for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit, for every horse thus purchased, or brought from the Indian country, a sum not more than one hundred dollars, nor less than thirty dollars, to be recovered in any court of record having competent jurisdiction. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons not licensed, as above, to purchase the same, shall forfeit the value of such horse: one half for the benefit of the informant, the other half for the use of the United States, to be recovered, as aforesaid.

**SEC. 7.** *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horses, to or from any Indian; and that any person, offending herein, shall forfeit one thousand dollars, and be imprisoned, at the discretion of the court, before which the conviction shall be had, not exceeding twelve months.

**SEC. 8.** *And be it further enacted*, That no purchase or grant of lands, or of any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by a treaty or convention entered into pursuant to the constitution; and it shall be a misdemeanor, in any person not employed under the authority of the United States, in negotiating such treaty or convention, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months, directly or indirectly to treat with



any such Indians, nation or tribe of Indians, for the title or purchase of any lands by them held, or claimed: *Provided nevertheless*, That it shall be lawful for the agent or agents of any state, who may be present at any treaty, held with Indians under the authority of the United States, in the presence, and with the approbation of the commissioner or Commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claims to lands within such state, which shall be extinguished by the treaty.

**SEC. 9.** *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall and may be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and also to furnish them with goods or money, in such proportions, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think proper: *Provided*, That the whole amount of such presents, and allowance to such agents, shall not exceed twenty thousand dollars per annum.

**SEC. 10.** *And be it further enacted*, That the superior courts of each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes in each district of the United States, into which any offender against this act shall be first brought, or in which he shall be apprehended, shall have, and are hereby invested with full power and authority, to hear and determine all crimes, offenses and misdemeanors against this act; such courts proceeding therein, in the same manner, as if such crimes, offenses and misdemeanors had been committed within the bounds of their respective districts: And in all cases, where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States, in their respective

districts, shall have, and are hereby invested with like power to hear and determine the same.

**SEC. 11.** *And be it further enacted*, That it shall and may be lawful for the President of the United States, and for the governors of such territorial districts, respectively, on proof to them made, that any citizen or citizens of the United States, or of the said districts, or either of them, have been guilty of any of the said crimes, offences or misdemeanors, within any town, settlement or territory, belonging to any nation or tribe of Indians, to cause such person or persons to be apprehended, and brought into either of the United States, or of the said districts, and to be proceeded against in due course of law. And in all cases, where the punishment shall be death, it shall be lawful for the governor of the district, into which the offender may be first brought, or in which he may be apprehended, to issue a commission of oyer and terminer to the superior judges of the district, who shall have full power and authority to hear and determine all such capital cases, in the same manner, as the superior courts of such districts have, in their ordinary sessions: And when the offender shall be brought into, or shall be apprehended in any of the United States, except Kentucky, it shall be lawful for the President of the United States, to issue a like commission to any two judges of the supreme court of the United States, and the judge of the district, in which the offender may have been apprehended or first brought; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment, in the same manner, as such circuit court might or could do.

**SEC. 12.** *And be it further enacted*, That all fines and forfeitures, which shall accrue under this act, shall be one half to the use of the informant, and the other half, to the use of the United States, except where the prosecution shall be first instituted on behalf of the United States, in which case, the whole shall be to their use.



**SEC. 13.** *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the jurisdiction of any of the individual states.

**SEC. 14.** *And be it further enacted*, That all and every other act and acts coming within the purview of this act, shall be and are hereby repealed.

**SEC. 15.** *And be it further enacted*, That this act shall be in force, for the term of two years, and from thence to the end of the then next session of Congress, and no longer.
APPROVED, March 1, 1793.

## INDIAN TRADE AND INTERCOURSE ACT OF 1796
1 Stat. 469

**An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers.**

**SECTION 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following boundary line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked, in all such places, as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: Beginning at the mouth of Cayahoga river on Lake Erie, and running thence up the same, to the portage between that and the Tuscaroras branch of the Muskingum; thence down that branch, to the crossing place above Fort Lawrence, thence westerly to a fork of that branch of the Great Miami river, running into the Ohio, at, or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio, and Saint Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westerly course to Fort Recovery, which stands on a branch of the Wabash;

thence southwesterly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttawa river; thence down the said river Ohio, to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clark, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennesse rivers; thence easterly on the said ridge, to a point, from whence, a southwest line will strike the mouth of Duck river; thence still easterly on the said ridge, to a point forty miles above Nashville; thence northeast, to Cumberland river; thence up the said river, to where the Kentucky road crosses the same; thence to the top of Cumberland mountain; thence along Campbell's line, to the river Clinch, thence down the said river, to a point from which a line shall pass the Holsten, at the ridge, which divides the waters running into Little River, from those running into the Tennessee; thence south, to the North Carolina boundary; thence along the South Carolina Indian boundary, to and over the Ocunna mountain, in a southwest course, to Tugelo river; thence in a direct line, to the top of the Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Oakmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river Saint Mary's; *Provided always*, that if the boundary line between the said Indian tribes and the United States, shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act, shall be construed to apply to the said line so to be varied, in the same manner, as the said provisions now apply to the boundary line hereinbefore recited.



**SEC. 2.** *And be it further enacted*, That if any citizen of, or other person resident in the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range, on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months.

**SEC. 3.** *And be it further enacted*, That if any such citizen, or other person, shall go into any country, which is allotted, or secured by treaty as aforesaid to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the governor of some one of the United States, or the officer of the troops of the United States commanding at the nearest post on the frontiers, or such other person, as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned, not exceeding three months.

**SEC. 4.** *And be it further enacted*, That if any such citizen or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or other crime against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States; or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and he imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: And if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value,

shall be paid out of the treasury of the United States: *Provided* nevertheless, that no such Indian shall be entitled to any payment out of the treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

**SEC. 5.** *And be it further enacted*, That if any such citizen, or other person, shall make a settlement on any lands belonging, or secured, or granted by treaty with the United States, to any Indian tribe, or shall survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit all his right, title and claim, if any he hath, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, whereupon he shall make a settlement, or which he shall survey, or attempt to survey, or designate any of the boundaries thereof, by marking trees or otherwise, and shall also forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States, to take such measures and to employ such military force, as he may judge necessary, to remove from lands belonging, or secured by treaty, as aforesaid, to any Indian tribe, any such citizen or other person, who has made or shall hereafter make, or attempt to make a settlement thereon: And every right, title, or claim forfeited under this act, shall be taken and deemed to be vested in the United States, upon conviction of the offender, without any other or further proceeding.

**SEC. 6.** *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians in amity with the United States, such offender, on being thereof convicted, shall suffer death.

**SEC. 7.** *And be it further enacted*, That no such citizen, or other person, shall be permitted to reside at any of the towns,



or hunting camps, of any of the Indian tribes as a trader, without a license under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose: which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, who shall enter into bond, with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions, as are, or shall be made for the government of trade and intercourse with the Indian tribes: and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations or restrictions provided for the government of trade and intercourse with the Indian tribes; and shall put in suit, such bonds as he may have taken, on the breach of any condition therein contained.

**SEC. 8.** *And be it further enacted*, That any such citizen or other person, who shall attempt to reside in any town, or hunting camp, of any of the Indian tribes, as a trader without such license, shall forfeit all the merchandise offered for sale, to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

**SEC. 9.** *And be it further enacted*, That if any such citizen, or other person, shall purchase, or receive of any Indian, in- the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

**SEC. 10.** *And be it further enacted*, That no such citizen or other person, shall be permitted to purchase any horse of an

Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him, as aforesaid; describing such horses, by their colour, height, and other natural or artificial marks, under the penalty contained in their respective bonds. And every such person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall, for every horse thus purchased, and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse.

**SEC. 11.** *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse, to or from any Indian, excepting for, and on account of the United States. And any person offending herein, shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

**SEC. 12.** *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty, or



convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held, or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided nevertheless*, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians, under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

**SEC. 13.** *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, that the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

**SEC. 14.** *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or across the said boundary line, into any state or territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen, or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney

or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding eighteen months, then it shall be the duty of such superintendent, or other person authorized, as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction for the injury: And, in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured, an eventual indemnification: *Provided always*, that if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also* that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further*, that it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong.

**SEC. 15.** *And be it further enacted*, That the superior courts in each of the said territorial districts, and the circuit courts, and other courts of the United States, of similar jurisdiction in criminal causes, in each district of the United States in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for



trial, shall have, and are hereby invested with, full power and authority, to hear and determine all crimes, offenses and misdemeanors, against this act; such courts proceeding therein, in the same manner, as if such crimes, offenses and misdemeanors had been committed within the bounds of their respective districts: And in all cases, where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States in their respective districts, shall have, and are hereby invested with like power to hear and determine the same, any law to the contrary notwithstanding: And in all cases, where the punishment shall be death, it shall be lawful for the governor of either of the territorial districts, where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of oyer and terminer, to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner, as the superior courts of such district have in their ordinary sessions: And when the offender shall be apprehended, or brought for trial, into any of the United States, except Kentucky, it shall be lawful for the President of the United States, to issue a like commission to any one or more judges of the supreme court of the United States, and the judge of the district, in which such offender may have been apprehended, or shall have been brought for trial; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment, in the same manner, as such circuit court might or could do. And the district courts of Kentucky and Maine shall have jurisdiction of all crimes, offences and misdemeanors committed against this act, and shall proceed to trial and judgment, in the same manner, as the circuit courts of the United States.

**SEC. 16.** *And be it further enacted*, That it shall be lawful for the military force of the United States, to apprehend every person, who shall, or may be found in the Indian country, over and beyond the said boundary line, between the United States

and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining states or districts, to be proceeded against, in due course of law: *Provided*, that no person, apprehended by military force, as aforesaid, shall be detained longer than ten days, after the arrest, and before removal.

**SEC. 17.** *And be it further enacted*, That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial, in the same manner, as if such crime or offence had been committed within such state or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose, and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized, as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

**SEC. 18.** *And be it further enacted*, That the amount of fines, and duration of imprisonment, directed by this act as a punishment, for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court, before whom the trial shall be had; and that all fines and forfeitures, which shall accrue under this act, shall be, one half to the use of the informant, and the other half to the use of the United States: Except where the prosecution shall be first instituted on behalf of the United States; in which case, the whole shall be to their use.

**SEC. 19.** *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary



jurisdiction of any of the individual states; or the unmolested use of a road from Washington district, to Mero district; and of the navigation of the Tennessee river, as reserved and secured by treaty.

**SEC. 20.** *And be it further enacted*, That the President of the United States be, and he is hereby authorized, to cause to be clearly ascertained, and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the United States and any Indian tribe, which now are, or hereafter may be established by treaty.

**SEC. 21.** *And be it further enacted*, That all and every other act and acts, coming within the purview of this act, shall be, and they are hereby repealed: *Provided, nevertheless*, that all disabilities, that have taken place, shall continue and remain; all penalties and forfeitures, that have been incurred, may be recovered; and all prosecutions and suits, that may have been commenced, may be prosecuted to final judgment, under the said act or acts, in the same manner, as if the said act or acts were continued, and in full force and virtue.

**SEC. 22.** *And be it further enacted*, That this act shall be in force, for the term of two years, and from thence to the end of the session of Congress next thereafter, and no longer.

APPROVED May 19, 1796.

## INDIAN TRADE AND INTERCOURSE ACT OF 1834

4 Stat. 729

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of

the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

SEC. 2. *And be it further enacted*, That no person shall be permitted to trade with any of the Indians (in the Indian country) without a license therefor from a superintendent of Indian affairs, or Indian agent, or sub-agent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi, and not exceeding three years for the tribes west of that river. And the person applying for such license shall give bond in a penal sum not exceeding five thousand dollars, with one or more sureties, to be approved by the person issuing the same, conditioned that such person will faithfully observe all the laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same. And the superintendent of the district shall have power to revoke and cancel the same, whenever the person licensed shall, in his opinion, have transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or that it would be improper to permit him to remain in the Indian country. And no trade with the said tribes shall be carried on within their boundary, except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and sub-agents, and to be inserted in the license. And it shall be the duty of the persons granting or revoking such licenses, forthwith to report the same to the commissioner of Indian affairs, for his approval or disapproval.

SEC. 3. *And be it further enacted*, That any superintendent or agent may refuse an application for a license to trade, if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his



bond decreed. But an appeal may be had from the agent or the superintendent, to the commissioner of Indian affairs; and the President of the United States shall be authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected; and no trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

SEC. 4. *And be it further enacted*, That any person other than an Indian who shall attempt to reside in the Indian country as a trade or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover forfeit and pay the sum of five hundred dollars.

SEC. 5. *And be it further enacted*, That no license to trade with the Indians shall be granted to any persons except citizens of the United States: *Provided*, That the President shall be authorized to allow the employment of foreign boatmen and interpreters, under such regulations as he may prescribe.

SEC. 6. *And be it further enacted*, That if a foreigner shall go into the Indian country without a passport from the War Department, the superintendent, agent, or sub-agent of Indian affairs, or from the officer of the United States commanding the nearest military post on the frontiers, or shall remain intentionally therein after the expiration of such passport, he shall forfeit and pay the sum of one thousand dollars; and such passport shall express the object the object of such person, the time he is allowed to remain, and the route he is to travel.

SEC. 7. *And be it further enacted*, That if any person other than an Indian shall, within the Indian country, purchase or receive of any Indian, in the way of barter, trade, or pledge,

a gun, trap, or other article commonly used in hunting, any instrument of husbandry or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any other article of clothing, except skins or furs, he shall forfeit and pay the sum of fifty dollars.

**SEC. 8** *And be it further enacted,* That if any person, other than an Indian, shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt, or trap, or take and destroy, any peltries or game, except for subsistence in the Indian country, such person shall forfeit the sum of five hundred dollars, and forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken.

**SEC. 9.** *And be it further enacted,* That if any person shall drive, or otherwise convey any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each animal of such stock.

**SEC. 10.** *And be it further enacted,* That the superintendent of Indian affairs, and Indian agents and sub-agents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.

**SEC. 11.** *And be it further enacted,* That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.



**SEC. 12.** *And be it further enacted,* That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars: *Provided, nevertheless,* That it shall be lawful for the agent or agents of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with approbation of the commissioner or commissioners of the United States appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claim to lands within such state, which shall be extinguished by treaty.

**SEC. 13.** *And be it further enacted,* That if any citizen or other person residing within the United States or the territory thereof, shall send any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or other law of the United States, or to disturb the peace and tranquility of the United States, he shall forfeit and pay the sum of two thousand dollars.

**SEC. 14.** *And be it further enacted,* That if any citizen, or other person, shall carry or deliver any such talk, message, speech, or letter, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatsoever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, knowing the contents thereof, he shall forfeit and pay the sum of one thousand dollars.

**SEC. 15.** *And be it further enacted,* That if any citizen, or other person, residing or living among the Indians, or

elsewhere within the territory of the United States, shall carry on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or in case any citizen or other person shall alienate, or attempt to alienate, the confidence of any Indian or Indians from the government of the United States, he shall forfeit the sum of one thousand dollars.

**SEC. 16**. *And be it further enacted,* That where, in the commission, by a white person, of any crime, offence, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured or destroyed, and a conviction is had for such crime, offence, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the treasury of the United States: *Provided*, That no such Indian shall be entitled to any payment, out of the treasury of the United States, for any such property, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence: *And provided, also*, That if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the treasury, as aforesaid.

**SEC. 17**. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any state or territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or other property, belonging to any citizen or inhabitant of the United States,



such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the commissioner of Indian affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and, in the mean time, in respect to the property so taken, stolen or destroyed, the United States guaranty, to the party so injured, an eventual indemnification: *Provided*, That, if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: *And provided, also,* That, unless such claim shall be presented within three years after the commission of the injury, the same shall be barred. And if the nation or tribe to which such Indian may belong, receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted, therefrom, and paid to the party injured; and, if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the treasury of the United States: *Provided,* That nothing herein contained shall prevent the legal apprehension and punishment of any Indians having so offended.

**SEC. 18**. *And be it further enacted,* That the superintendents, agents, and sub-agents, within their respective districts, be, and are hereby authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the two preceding

sections of this act, and to administer an oath to the deponents.

**SEC. 19**. *And be it further enacted,* That it shall be the duty of the superintendents, agents. and sub-agents, to endeavour to procure the arrest and trial of all Indians accused of committing any crime, offence or misdemeanor, and all other persons who may have committed crimes or offences within any state or territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize; and the President may direct the military force of the United States to be employed in the apprehension of such Indians, and also, in preventing or terminating hostilities between any of the Indian tribes.

**SEC. 20**. *And be it further enacted*, That if any person shall sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars; and if any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, Indian agent, or sub-agent, or military officer, agreeably to such regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the goods, boats, packages, and peltries of such persons shall be seized and delivered to



the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the use of the informer, and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person, in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, excepting military supplies as mentioned in this section.

**SEC. 21**. *And be it further enacted,* That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

**SEC. 22**. *And be it further enacted,* That in all trials about the right of property in which an Indian may be a party on one side, and a white person or the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

**SEC. 23**. *And be it further enacted,* That it shall be lawful for the military force of the United States to be employed in such manner and under such regulations as the President may direct, in the apprehension of every person who shall or may be found in the Indian country, in violation of any of the provisions of this act, and him immediately to convey from said Indian country, in the nearest convenient and safe route, to the civil authority of the territory or judicial district in which said person shall be found, to be proceeded against in due course of law; and also, in the examination and seizure of stores, packages, and boats, authorized by the twentieth section of this act, and in preventing the

introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law: *Provided*, That no person apprehended by military force as aforesaid, shall be detained longer than five days after the arrest and before removal. And all officers and soldiers who may have any such person or persons in custody shall treat them with all the humanity which the circumstances will possibly permit; and every officer or soldier who shall be guilty of maltreating any such person while in custody, shall suffer such punishment as a court-martial shall direct.

**SEC. 24**. *And be it further enacted,* That for the sole purpose of carrying this act into effect, all that part of the Indian country west of the Mississippi river, that is bounded north by the north line of lands assigned to the Osage tribe of Indians, produced east to the state of Missouri: west, by the Mexican possessions; south, by Red river; and east, by the west line of the territory of Arkansas and the state of Missouri, shall be, and hereby is, annexed to the territory of Arkansas; and that for the purpose aforesaid, the residue of the Indian country west of the said Mississippi river shall be, and hereby is, annexed to the judicial district of Missouri; and for the purpose aforesaid, the several portions of Indian country east of the said Mississippi river, shall be, and are hereby, severally annexed to the territory in which they are situate.

**SEC. 25**. *And be it further enacted,* That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian country: *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian.

**SEC. 26**. *And be it further enacted,* That if any person who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the



United States, or either of the territories, such offenders may be there apprehended, and transported to the territory or judicial district having jurisdiction of the same.

**SEC. 27**. *And be it further enacted,* That all penalties which shall accrue under this act, shall be sued for and recovered in an action of debt, in the name of the United States, before any court having jurisdiction of the same, (in any state or territory in which the defendant shall be arrested or found,) the one half to the use of the informer, and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

**SEC. 28**. *And be it further enacted,* That when goods or other property shall be seized for any violation of this act, it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

**SEC. 29**. *And be it further enacted,* That the following acts and parts of acts shall be, and the same are hereby, repealed, namely: An act to make provision relative to rations for Indians; and to their visits to the seat of government, approved May thirteen, eighteen hundred; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved March thirty, eighteen hundred and two; an act supplementary to the act passed thirtieth March, eighteen hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved April twenty-nine, eighteen hundred and sixteen; an act for the punishment of crimes and offences committed within the Indian boundaries, approved March three, eighteen hundred and seventeen; the first and second sections of the act directing the manner of appointing Indian agents, and continuing the "Act establishing trading-houses with the Indian tribes," approved April

sixteen, eighteen hundred and eighteen; an act fixing the compensation of Indian agents and factors, approved April twenty, eighteen hundred and eighteen, an act supplementary to the act entitled "An act to provide for the prompt settlement of public accounts," approved February twenty-four, eighteen hundred and nineteen; the eighth section of the act making appropriations to carry into effect treaties concluded with several Indian tribes therein mentioned, approved March three, eighteen hundred and nineteen; the second section of the act to continue in force for a further time the act entitled "An act for establishing trading-houses with the Indian tribes, and for other purposes," (a) approved March three, eighteen hundred and nineteen; an act to amend an act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth of March, eighteen hundred and two, approved May six, eighteen hundred and twenty-two; an act providing for the appointment of an agent for the Osage Indians west of the state of Missouri and territory of Arkansas, and for other purposes, approved May eighteen, eighteen hundred and twenty-four; the third, fourth, and fifth sections of "An act to enable the President to hold treaties with certain Indian tribes, and for other purposes," approved May twenty-five, eighteen hundred and twenty-four, the second section of the "Act to aid certain Indians of the Creek nation in their removal to the west of the Mississippi," approved May twenty, eighteen hundred and twenty-six; and an act to authorize the appointment of a sub-agent to the Winnebago Indians on Rock river, approved February twenty-five, eighteen hundred and thirty-one: *Provided, however,* That such repeal shall not effect [affect] any rights acquired, or punishments, penalties, or forfeitures incurred, under either of the acts or parts of acts, no impair or affect the intercourse act of eighteen hundred and two, so far as the same relates to or concerns Indian tribes residing east of the Mississippi: *And provided also,* That such repeal shall not be construed to revive any acts or parts of acts repealed by either of the acts or sections herein described.



**SEC. 30.** *And be it further enacted,* That until a western territory shall be established, the two agents for the Western territory, as provided in the act for the organization of the Indian department, this day approved by the President, shall execute the duties of agents for such tribes as may be directed by the President of the United States. And it shall be competent for the President to assign to one of the said agents, in addition to his proper duties, the duties of superintendent for such district of country or for such tribes as the President may think fit. And the powers of the superintendent at St. Louis, over such district or tribes as may be assigned to such acting superintendent, shall cease: *Provided,* That no additional compensation shall be allowed for such services.

APPROVED, June 30, 1834.

## TREATY OF FORT PITT (PENNSYLVANIA) WITH THE DELAWARE NATION

7 Stat. 13.

*Articles of agreement and confederation, made and entered into by Andrew and Thomas Lewis, Esquires, Commissioners for, and in Behalf of the United States of North-America of the one Part, and Capt. White Eyes, Capt. John Kill Buck, Junior, and Capt. Pipe, Deputies and Chief Men of the Delaware Nation of the other Part.*

**ARTICLE 1.** That all offenses or acts of hostilities by one, or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

**ARTICLE 2.** That a perpetual peace and friendship shall from henceforth take place, and subsist between the contracting parties aforesaid, through all succeeding generations: and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their abilities,

till their enemies are brought to reasonable terms of accommodation: and that if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect.

**ARTICLE 3.** And whereas the United States are engaged in a just and necessary war, in defense and support of life, liberty and independence, against the King of England and his adherents, and as said King is yet possessed of several posts and forts on the lakes and other places, the reduction of which is of great importance to the peace and security of the contracting parties, and as the most practicable way for the troops of the United States to some of the posts and forts is by passing through the country of the Delaware nation, the aforesaid deputies, on behalf of themselves and their nation, do hereby stipulate and agree to give a free passage through their country to the troops aforesaid, and the same to conduct by the nearest and best ways to the posts, forts or towns of the enemies of the United States, affording to said troops such supplies of corn, meat, horses, or whatever may be in their power for the accommodation of such troops, on the commanding officers, &c. paying, or engaging to pay, the full value of whatever they can supply them with.

And the said deputies, on the behalf of their nation, engage to join the troops of the United States aforesaid, with such a number of their best and most expert warriors as they can spare, consistent with their own safety, and act in concert with them; and for the better security of the old men, women and children of the aforesaid nation, whilst their warriors are engaged against the common enemy, it is agreed on the part of the United States, that a fort of sufficient strength and capacity be built at the expense of the said States, with such assistance as it may be in the power of the said Delaware Nation to give, in the most convenient place, and advantageous situation, as shall be agreed on by the commanding officer of the troops aforesaid, with the advice



and concurrence of the deputies of the aforesaid Delaware Nation, which fort shall be garrisoned by such a number of the troops of the United States, as the commanding officer can spare for the present, and hereafter by such numbers, as the wise men of the United States in council, shall think most conducive to the common good.

**ARTICLE 4.** For the better security of the peace and friendship now entered into by the contracting parties, against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs and usages of the contracting parties and natural justice: The mode of such trials to be hereafter fixed by the wise men of the United States in Congress assembled, with the assistance of such deputies of the Delaware nation, as may be appointed to act in concert with them in adjusting this matter to their mutual liking.

And it is further agreed between the parties aforesaid, that neither shall entertain or give countenance to the enemies of the other, or protect in their respective states, criminal fugitives, servants or slaves, but the same to apprehend, and secure and deliver to the State or States, to which such enemies, criminals, servants or slaves respectively belong.

**ARTICLE 5.** Whereas the confederation entered into by the Delaware nation and the United States, renders the first dependent on the latter for all the articles of clothing, utensils and implements of war, and it is judged not only reasonable, but indispensably necessary, that the aforesaid Nation be supplied with such articles from time to time, as far as the United States may have it in their power, by a well-regulated trade, under the conduct of an intelligent, candid agent, with an adequate salary, one more influenced by the love of his country, and a constant attention to the duties of his

department by promoting the common interest, than the sinister purposes of converting and binding all the duties of his office to his private emolument: Convinced of the necessity of such measures, the Commissioners of the United States, at the earnest solicitation of the deputies aforesaid, have engaged in behalf of the United States, that such a trade shall be afforded said nation, conducted on such principles of mutual interest as the wisdom of the United States in Congress assembled shall think most conducive to adopt for their mutual convenience.

**ARTICLE 6**. Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion, that it is the design of the States aforesaid, to extirpate the Indians and take possession of their country: to obviate such false suggestion, the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into. And it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and to form a state whereof the Delaware nation shall be the head, and have a representation in Congress: Provided, nothing contained in this article to be considered as conclusive until it meets with the approbation of Congress. And it is also the intent and meaning of this article, that no protection or countenance shall be afforded to any who are at present our enemies, by which they might escape the punishment they deserve.

In witness whereof, the parties have hereunto interchangeably set their hands and seals, at Fort Pitt, September seventeenth, anno Domini one thousand seven hundred and seventy-eight.



## TREATY OF FT. SCHUYLER
September 22, 1788

At a treaty held at Fort Schuyler, formerly called Fort Stanwix in the State of New York, by his Excellency George Clinton, Governor of the said State, and William Floyd, Ezra L'Hommedieu, Richard Varick, Samuel Jones, Egbert Benson and Peter Gansevoort, Junr. (Commissioners authorized for that purpose by and on behalf of the People of the State of New York) with the Tribe or Nation of Indians called the Oneidas - it is on the twenty-second day of September, in the year one thousand seven hundred and eighty-eight, covenanted and concluded as follows:

*First,* The Oneidas do cede and grant all their lands to the people of the State of New York forever.

*Secondly,* Of the said ceded lands the following tract, to wit: Beginning at the Wood Creek opposite to the mouth of the Canada Creek, and where the line of property comes to the Said Wood Creek, and runs thence southerly to the north-west corner of the tract to be granted to John Francis Perache, thence along the westerly bounds of the said tract to the south-west corner thereof, thence to the north-west corner of a tract granted to James Dean; thence along the westerly bounds thereof to the south-west corner 6 ' of the last mentioned tract; thence due south until it intersects a due west line from the bead of the Tianaderha or Unadilla River; thence from the said point of intercessio.n due west until the Deep Spring bears due North; thence due North to the Deep Spring, thence the nearest course to the Caneserage Creek, and thence along the said Creek, the Oneida Lake and the Wood Creek to the place of beginning, shall be reserved for the following several uses. That is to say, the lands lying to the northward on a line parallel to the southern line of the said reserved lands, and four miles distant from the said Southern line, the Oneidas shall hold to themselves and their posterity forever for their

own use and cultivation, but not to be sold, leased or in any other manner aliened or disposed of to others. The Oneidas may from time to time forever make leases of the lands between the said parallel line (being the residue of the said reserved lands) to such persons and on such rents reserved as they shall deem proper; but no lease shall for a longer term than twenty-one years from the making thereof; and no new lease shall be made until the former lease of the same lands shall have expired. The rents shall be to the use of the Oneidas and their posterity forever; and the people of the State of New York shall from time to time make provision by law to compel the lessees to pay the rents, and in every other respect to enable the Oneidas and their posterity to have the full benefit of their right so to make leases and to prevent frauds on them respecting the same; and the Oneidas and their posterity forever shall enjoy the free right of hunting in every part of the said ceded lands, and of fishing in all the waters within the same, and especially there shall forever remain ungranted by the people of the State of New York one half mile square at the distance of every six miles of the lauds along the northern banks of the Oneida Lake, one half mile in breadth of the lands on each side of the Fish Creek, and a convenient piece of land at the fishing place in the Onondaga River about three miles from where it issues out of the Oneida Lake, and to remain as well for the Oneidas and their posterity as for the inhabitants of the said State to land and encamp on. But notwithstanding any reservation to the Oneidas, the people of the State of New York may erect public works and edifices as they shall think proper at such place and places at or near the confluence of the Wood Creek and Oneida Lake as they shall elect and may take and appropriate for such works or buildings lands to the extent of one square mile at each place; and further notwithstanding any reservations of lands to the Oneidas for their own use, the New England Indiana (now settled at Brothertown under the pastoral care of the Rev. Samson Occom) and their posterity forever, and the Stockbridge Indians and their posterity forever are to enjoy



their settlements on the lands heretofore given to them by the Oneidas for that purpose, that is to say, a tract of two miles in breadth and three miles in length for the New England Indians, and a tract of six miles square for the Stockbridge Indians.

*Thirdly,* In consideration of the Said Cession and Grant, the People of the State of New York do at this treaty pay to the Oneidas two thousand dollars in money, two thousand dollars in clothing and other goods, and one thousand dollars in provisions; and also five hundred dollars in money to be applied towards building a grist milt and saw mill at their village (the receipt of which moneys, clothing and goods and provisions the Oneidas do now acknowledge), and the People of the State of New York shall annually pay to the Oneidas and their posterity forever, on the first day of June in every year at Fort Schuyler aforesaid, six hundred dollars in silver; but if the Oneidas or their posterity shall at any time hereafter elect that the whole or any part of the said six hundred dollar's shall be paid in clothing or provisions, and give six weeks previous notice thereof to the Governor of the said State for the time being, then so much of the annual payment shall for that time be in clothing or provisions as the Oneidas and their posterity shall elect, and at the price which the same shall cost the people of the State of New York at Fort Schuyler aforesaid; and as a further consideration to the Oneidas, the people of the State of New York shall grant to the Said John Francis Perache a tract of land, Beginning in the line of property at it certain cedar tree near the road leading to Oneida, and runs from the said cedar tree southerly along the line of property two miles; thence westerly at right angles to the said line of property two miles; thence northerly at right angles to the last course two miles, and thence to the place of beginning; which the said John Francis Perache bath consented to accept from the Oneidas in satisfaction for an injury done to him by one of their Nation. And further, the lands intended by the Oneidas for John T. Kirkland and for George IV. Kirkland, being now appropriated to the use of the

Oneidas, the people of the State of New York shall therefore, by a grant of other lands make compensation to the said John T. Kirkland and George W. Kirkland. And further, that the people of the State of New York shall as a benevolence from the Oneidas to Peter Penet and in return for services rendered by him to their Nation, grant to the said Peter Penet of the said ceded lands lying to the northward of the Oneida Lake a tract of ten miles square, wherever he shall elect the same.

*Fourthly*. The people of the State of New York may in such manner as they shall deem proper, prevent any persons except the Oneidas, from residing or settling on the lands so to be held by the Oneidas and their posterity for their use and cultivation; and if any person shall without the consent of the People of the State of New York come to reside or settle on the said lands or on any other of the lands so ceded as aforesaid, except the lands whereof the Oneidas may make leases as aforesaid, the Oneidas and their posterity shall forthwith give notice of such intrusions to the Governor of the said state for the time being. And further, the Oneidas and their posterity forever shall at the request of the Governor of the said State be aiding to the people of the State of New York in removing all such intruders and in apprehending not only such intruders but also felons, and other offenders who may happen to be on the said ceded lands, to the end that such intruders, felons and other offenders may be brought to justice.

In testimony whereof, as well the sachems, chiefs, warriors and others of the said Oneidas in behalf of their tribe or Nation, as the said Governor and other commissioners of the People of the State of New York, have hereunto interchangeably set their hands and affixed their seals the day and year first above written.



## TREATY BETWEEN THE CREEK AND GEORGIA
November 12, 1785

Articles of a treaty concluded at Galphinton on the 12th day of November one thousand seven hundred and eighty-five, between the underwritten commissioners, in behalf of the State of Georgia of the one part, and the kings, head men and warriors in behalf of themselves, and all the Indians in the Creek nation of the other, on the following conditions:

ARTICLE 1.

The said Indians for themselves and all the tribes or towns within their respective nations, within the limits of the State of Georgia, have been and now are members of the same, since the day and date of the constitution of the said State of Georgia.

II. If any citizen of this State or other person or persons shall attempt to settle or run any of the lands reserved to the Indians for their hunting grounds, such person or persons may be detained until the governor shall demand him or them, and then it should be lawful for any of the tribes near such offenders to come and see the punishment, according to such laws as now are or hereafter shall be enacted by the said State for trying such offenses.

III. It shall in no case be understood, that the punishment of the innocent, under the idea of retaliation shall be practised on either side.

IV. If any citizen of this State or other white person or persons shall commit a robbery or murder or other capital crime on any Indian, such offenders shall be delivered up to justice, and shall be tried according to the laws of the State, and due notice of such intended punishment shall be sent to some one of the tribes.

V. If any Indian shall commit a robbery or murder or other capital crime on any white person, such offenders shall receive a punishment adequate to such offence, and due notice of such intended punishment shall be given to his honour the governor.

VI. In case of any design being formed in any neighbouring tribes, against the peace or safety of the State, which they shall know or suspect, they shall make known the fame to his honor the governor.

VII. All white person or persons shall be at liberty and conducted in safety into the settled parts of the State when they shall require it, except such persons as shall come under the restrictions pointed out in the second article.

VIII. The said Indians shall restore all the negroes, horses or other property that are or may be among them, belonging to any citizen of this State or any other person or persons whatever, to such person as the governor shall direct.

IX. That the trade with the said Indians shall be carried on as theretofore.

X. All horses belonging to any Indian that shall be found in the said State, such horses shall be restored to such person as the head men of the tribe where such Indian may reside shall direct.

XI. The present temporary line reserved to the Indians for their hunting ground, shall be agreeable to the treaty held at Augusta in the year one thousand seven hundred and eighty-three; and that a new temporary line shall begin at the forks of the Oconee and Okmulgee rivers, thence in a south-west direction, until it shall intersect the most southern part of the stream called St. Mary's river, including all the islands and waters if the said stream, thence down the said river to the old line. And all the ground without the said new temporary lines when run and completed shall be reserved to the Indians for their hunting grounds as aforesaid.



IN WITNESS where the parties have hereunto affixed their hands and seals the day and year before written.

## TREATY BETWEEN THE CREEK AND GEORGIA
November 3, 1786

Articles of a Treaty of peace, amity, and commerce, concluded near the mouth of Shoulder-bone Creek, a branch of the Oconee River the third day of November, in the year of our Lord one thousand seven hundred and eighty-six, and of the Independence of the United States of America the eleventh, between the subscribing Commissioners in behalf of the State of Georgia of the one part, and the underwritten Kings, head men, and Warriors, in behalf of the Creek Nation on the other, on the following conditions, namely.

WHEREAS since the signing of the last treaty held at Galphinton and dated the twelfth day of November one thousand seven hundred and eighty-five, between commissioners appointed by the said State, and the kings, head men and warriors of the said Creek nation, acts of hostility have been committed by parties of the Indians on the inhabitants of the said State, in violation of the said treaty, whereby the friendship and harmony so essentially necessary to both parties have been greatly disturbed. AND WHEREAS the said parties are now mutually desirous of renewing a treaty, which may comprehend such articles as will give satisfaction to the party injured, and restore peace, friendship, and commerce to both. It is therefore covenanted and agreed.

*First,* The Indians for themselves and the rest of the kings, head men and warriors of the Creek nation, do promise and engage that six of their people who were of the parties that murdered the same number (say six) of the white inhabitants last spring shall be put to death in a manner

satisfactory to the person or persons whom his honor the governor or the commissioners may send to see it done. And that the white people who were the means of the said murders being committed shall be removed from the nation without delay.

*Second*, All negroes, horses, cattle and other property now in the nation, and which were taken from the inhabitants of Georgia, shall be restored to such person or persons as his honor the governor or the commissioners shall direct. All white or other free people in the nation who are held as prisoners or slaves shall also be delivered up to the aforesaid persons.

*Third*, If any citizen of this State or other person or persons shall attempt to settle or run any of the lands reserved for the Indians for their hunting grounds, such person or persons may be detained until the governor shall be informed thereof and demand him or them, and then any of the tribes near such offenders to come and see the punishment according to such laws as now are or hereafter may be enacted by the said State for trying such offenders.

*Fourth*, The punishing of innocent persons under the idea of retaliation shall not be practised on either side.

*Fifth*, If any citizen of the State, or other white person or persons shall commit a robbery or murder or other capital crime on an Indian, such offender shall be delivered up to justice, and be tried according to the laws of the State, and due notice of such intended punishment shall be sent to some one of the tribes.

*Sixth*, If any Indian shall commit a robbery or murder or other capital crime on any white person, such offender shall receive a punishment adequate to the offence, and due notice of such intended punishment shall be given to his honor the governor.

*Seventh,* If the Indians shall know or suspect of any design or any neighbouring tribes against the peace or safety



of this State, they shall make the same known in the most expeditious manner to his honor the governor.

*Eighth*, All white persons shall be at liberty and conducted in safety into the settled parties of the State, when they shall require it, except such persons as shall come under the restrictions pointed out in the third article.

*Ninth*, The trade with the Indians shall be carried on as heretofore. And all just debts due by any of the said Indians to any of the merchants or traders of the said State shall be fairly and fully paid.

*Tenth*, The present temporary lines reserved to the Indians for their hunting grounds, shall be agreeable to the treaties held at Augusta and Galphinton the former bearing date of the first day of November one thousand seven hundred and eighty-three, and the latter the twelfth day of November one thousand seven hundred and eighth-five, every part of which is hereby fully confirmed. And the said lines shall be marked as soon as the Indians can possibly make it convenient to come down and see it done, the present being their hunting season. And of their intention of attending for the said purpose they shall notify his honor the governor at least one month before their departure from the nation.

*Eleventh*, After the aforesaid lines are marked, neither white persons nor Indians shall be allowed to pass them without a special licence for that purpose, that for a white person to be from under the hand of his honor the governor, and that for a trader or Indian from under the hand of the agent of the State or his deputy residing in the nation. Any person of either party who shall be found transgressing this article shall be detained until the authority to whom such offender belongs shall be informed thereof.

*Twelfth*, In proof of their good faith and sincere intentions to perform the before mentioned articles, and for the security of the inhabitants of the said State, the Indians agree to leave in the hands of the commissioners five of their people, namely Chuwocklie Mico (of the Cowetas) Cuchas

Mico (of the Cussetas) Suckawockie (brother to the last named, also of the Cussetas) Eneathlocks (second man of the broken arrow) and Enautaleche (nephew to the head man of the Swaglos). The said Indians during their stay among the white people shall be provided with comfortable diet, lodging and clothing, and be well treated in ever other respect.

IN WITNESS whereof the parties have hereunto affixed their hands and seals the day and year before mentioned.